



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd Blvd, Suite 1100
PORTLAND, OREGON 97232-1274

Refer to NMFS No: WCR-2000-1484

March 12, 2019

Hanh Shaw
Water Quality Standards Unit Manager
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

Re: Implementation of Reasonable and Prudent Alternative for the Copper Aquatic Life Criteria in the 2014 Biological Opinion on Idaho's Water Quality Standards for Toxic Substances

Dear Ms. Shaw:

On February 28, 2019, NOAA's National Marine Fisheries Service (NMFS) received your letter stating the U.S. Environmental Protection Agency (EPA) intends to approve Idaho's revised aquatic life copper criteria (Idaho Administrative Procedures Act [IDAPA] 58.01.02.210.01 and IDAPA 58.01.02.210.03.c.v). NMFS issued a Biological Opinion of Idaho's Water Quality Standards for Toxic Substances (Opinion) on May 7, 2014, containing a reasonable and prudent alternative (RPA) for the copper aquatic life criteria. The RPA required EPA to approve or promulgate new copper criteria that are no less stringent than the Clean Water Act section 304(a) 2007 national recommended aquatic life copper criteria. The national recommended criteria were calculated using the biotic ligand model (BLM).

In our Opinion, NMFS evaluated EPA's 2007 BLM-based copper criteria. In our analysis, we identified several issues that required consideration when implementing the BLM-based criteria. Those issues included utilizing conservative estimates of variables that vary either daily (i.e., pH) or seasonally (i.e., dissolved organic carbon) and developing conservative estimates of the criteria when data are lacking. Ultimately, our analysis assumed the criteria would be implemented in a conservative manner protective of anadromous species and critical habitat during times and conditions when copper is most bioavailable.

During the negotiated rulemaking process, we outlined the issues summarized above in a comment letter submitted to the Idaho Department of Environmental Quality (IDEQ) on



June 1, 2017. We appreciate EPA's examination of both IDEQ's rule language and the *Implementation Guidance for the Idaho Copper Criteria for Aquatic Life, Using the Biotic Ligand Model* (IDEQ 2017) (*Implementation Guidance*) for consistency with the analysis contained in our Opinion. Based on this examination, EPA concluded the newly adopted state criteria and the *Implementation Guidance* are consistent with the RPA and effects analysis contained in our Opinion. While there remains considerable flexibility in implementation of the copper criteria, the rule requires that input measurements for the BLM must represent the most bioavailable conditions. Because this requirement is included in the rule, NMFS has adequate assurance that our assumption of the criteria being implemented in a conservative manner is reasonable.

We appreciate your effort to coordinate with us throughout Idaho's negotiated rulemaking process and during your preliminary review of Idaho's proposed rule. Based on our review of your letter, the proposed rule, and final implementation guidance, we agree with your conclusion that Idaho's copper criteria satisfy the requirements of the copper RPA. In addition, implementation of the criteria in a manner consistent with the rule language is not expected to result in effects to species or critical habitat that were not previously considered.

We look forward to continued engagement with both the EPA and IDEQ as the remaining RPAs in the Opinion are implemented. If you have any questions, please contact Johnna Sandow at 208-378-5737.

Sincerely,



Michael P. Tehan
Assistant Regional Administrator

cc: L. Macchio – EPA
S. Fisher – USFWS
J. Pappani – IDEQ